

The complaint

Mr S complains about repeated incorrect information from The Mortgage Works (UK) Plc ("TMW"). He said he'd lost faith in the company, so he moved his mortgage elsewhere. He wanted TMW to refund his Early Repayment Charge ("ERC") and pay compensation.

What happened

Mr S took out a buy to let ("BTL") mortgage with TMW in 2013. Then in 2015 he took some additional borrowing. This meant he had two separate borrowing amounts with TMW, within his overall mortgage. I'll refer to these as loans.

Mr S has ERCs on both of these loans. He can overpay a certain amount each year, without triggering those ERCs – which I'll refer to as an overpayment allowance. He has chosen to use this allowance, making overpayments, in the past.

Mr S complained that he'd been given repeated wrong information by TMW. He said it gave him the wrong amounts when he asked how much of his overpayment allowance was left on each loan. He got different answers from different people. He said TMW gave him the wrong account details for making overpayments to, and one of his payments didn't go through. He feared other payments might also be lost, although Mr S hasn't yet confirmed this. And Mr S said TMW had allocated his overpayments to the wrong loans.

TMW has accepted that it gave Mr S conflicting information about how much of his overpayment allowance was left. It said it had also looked at his loans, and could see that it had added some of these overpayments to the wrong loan, so it would correct that for him.

TMW also said it had given Mr S an incorrect sort code for the account to make overpayments to, so TMW couldn't find the transaction. It asked him to send evidence of the transaction, so it could locate the money.

TMW said it would like to pay Mr S £150 to say sorry for what had gone wrong, and it sent him a cheque for this amount. Mr S said he wasn't going to accept that. He said the onus had been put on him to check his statements for any missing payments, although this was TMW's mistake. And he'd been so upset by all of this, that he had now moved his mortgage elsewhere. Mr S wanted TMW to pay back the £1,600 ERC he was charged when he did that. He wanted the missing money refunded, and compensation.

Our investigator thought this complaint should be upheld. He said TMW had made mistakes about Mr S's overpayment allowance, and crediting payments to the wrong account, which it had now put right. If Mr S did find any missing payments, then they should be repaid, and 8% simple interest should be added to this refund.

Our investigator said he could see Mr S had ERCs on both of his loans. He went through the terms of those mortgages, and said Mr S had been properly advised of the ERC on each loan. Our investigator explained that an ERC is a common feature of fixed rate lending. It's there to make sure the mortgage company can still cover the costs it incurs in arranging fixed rate borrowing for a customer, if that customer decides to move their lending elsewhere.

before the fixed term period ends. Our investigator said that TMW didn't have to refund that money. But he did think it should pay Mr S £300 in compensation.

But TMW wanted a list of overpayments that had gone missing. It was concerned that it could be asked to refund payments which had already been returned to Mr S's account. Our investigator said Mr S didn't yet have a list, and TMW would only have to repay any missing payments that hadn't been credited to his TMW mortgage account or returned to his originating account.

TMW wanted to know if payments had gone missing or not. It said Mr S should be expected to know this. And it said if no payments were actually missing, then the trouble and upset to Mr S would be less. But our investigator said Mr S hadn't yet had time to go through his bank statements and cross-check them against his mortgage statements. Our investigator still thought it was fair and reasonable for TMW to refund these payments with interest if any were found.

TMW still thought its existing compensation offer was fair. It said the problems stemmed from calls on 17 January and after, and it had been able to arrange for this to be put right for Mr S within three days. It said Mr S still hadn't evidenced any missing payments, and it didn't think we could assess this complaint without that information. It thought that if there were no missing payments, there had been no detriment to Mr S by being provided with incorrect bank details to make the payment to.

Our investigator didn't change his mind. He said Mr S had lost all faith in TMW, and had remortgaged knowing he would have to pay ERCs that might not be refunded. Our investigator said that in his opinion, the knock on effect of the three errors TMW made was one of the key reasons why Mr S chose to move his mortgage to another lender.

Our investigator still thought TMW should pay Mr S £300, and refund any missing payments with interest. Because no agreement was reached, this complaint was passed to me for a final decision. I then reached my provisional decision on this case.

My provisional decision

I issued a provisional decision on this complaint and explained why I did propose to uphold it. This is what I said then:

TMW doesn't dispute that it gave Mr S incorrect information about the overpayment allowance that was left on each of his loans. Mr S said different people kept giving him different figures, and TMW accepts this. TMW also accepts that it sent some of the overpayment money Mr S had paid, to the wrong one of his two loans with it. And it accepts that it gave Mr S incorrect account information for making overpayments.

TMW says there's no evidence that any money has actually been lost, and if it hasn't, then it doesn't think it should have to pay £300 in compensation.

I accept that Mr S hasn't shown any money has been lost. He told TMW it had given him incorrect account details, and it said if a recent payment hadn't been sent back to him, it would investigate. Mr S didn't follow that up, and because he was aware of this problem at the time, I think he'd also have been aware of whether this money came back to him or not. So it seems likely that the money from this recent overpayment has been repaid to Mr S.

Mr S says his faith in TMW has been undermined, and he now wants all the other overpayments he's made to be checked, to see if those have also been properly

credited. I understand that Mr S doesn't think the onus should be on him to do these checks, but if TMW really hadn't received some of Mr S's other overpayments, it wouldn't be able to tell that these were sent. So I do think it's reasonable for TMW to say that Mr S needs to check this himself. He's told us that he hasn't had time to do that yet, for family reasons.

I don't think our service should delay a resolution in this complaint now. And I don't think we should put pressure on Mr S to make these checks immediately. Rather, I think this issue can be resolved if I include in my award a requirement for TMW to make refunds if any such missing overpayments are identified by Mr S, and to require it to pay 8% interest on top of that. But I also don't think this should be an open-ended offer – it wouldn't be fair to TMW to say it's got to pay interest on overpayments at any point in the future when Mr S tells it about those. So I propose to ask Mr S to notify TMW of any such overpayments within three months of the date of my final decision. TMW only has to pay interest on returned overpayments, if it is notified of them within this period.

TMW says that without proof of missing overpayments, it thinks its offer of £150 was fair. But I don't agree. I can see TMW made a series of errors. And I note that Mr S has difficulties communicating on the phone, which are well recorded on TMW's contact notes. But he has had to make repeated calls to TMW, over a number of days, to try to sort these problems out. So I think TMW should pay a little more than £150.

Mr S thought TMW should pay a lot more, because he thought he should get back the money he paid for the ERCs on his loans when he moved his mortgage to a different bank.

Our investigator set out that Mr S was properly notified of the ERCs on each of his loans. And I don't think it would be fair and reasonable in all the circumstances of this case to require TMW to refund the ERC which Mr S paid when he moved his mortgage elsewhere. I don't think that Mr S had to do that. But I do understand why Mr S chose to take this step, given TMW's errors, and I think the fact that he chose to pay the ERC without any reassurance that it would be refunded to him, demonstrates how concerned he was.

For those reasons, I think that even if TMW has not lost any of Mr S's previous overpayments, it should still pay him compensation of £300, to make up for the distress and inconvenience its mistakes caused to him.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Both sides replied.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mr S wrote to confirm he would accept the decision, and he sent us bank details. I should like to take the opportunity to remind Mr S that he must also contact our service to accept this, my final decision, for this award to be binding on TMW.

TMW said it had nothing further to add at this stage, and it accepted my provisional decision. It said Mr S had already accepted the first payment of £150 it had offered, so it would pay £150 more now. Our service had understood that Mr S refused this offer, but I'll allow TMW to take any payment it's already made for this complaint into account, in case Mr S changed his mind about this after he spoke to us.

TMW also agreed to pay interest on any missed payments, if Mr S provided evidence of such missed payments within three months of the date of the final decision. TMW said it would need to deduct basic rate tax from the interest and send Mr S a tax certificate, in line with HMRC rules. I appreciate that TMW will need to comply with HMRC rules for any payment of interest it makes, and I'll include that in my award.

Neither side has offered any further evidence or argument, and I haven't changed my mind. I'll now make the decision I originally proposed.

My final decision

My final decision is that The Mortgage Works (UK) Plc ("TMW" hereafter) must pay Mr S £300 in compensation. TMW can count towards that award any payment of compensation it has already made for this complaint.

And if, within three months of the date of this final decision, Mr S sends TMW evidence of payments made to his mortgage account which have not been returned to him or credited to either of his loans, then TMW must investigate, and refund any missing payments, with 8% simple interest from the date the money left Mr S's account to the date that TMW pays the refund. (HM Revenue and Customs requires TMW to take off tax from this interest. TMW must give Mr S a certificate showing how much tax it's taken off if he asks for one.)

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 18 October 2022.

Esther Absalom-Gough
Ombudsman